

October 20, 2020

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2310A)
Washington, DC 20460
Submitted electronically at <https://www.foia.gov>
Courtesy copy sent by mail

Re: Freedom of Information Request

Dear Freedom of Information Officer,

This Freedom of Information Act (“FOIA”) request is submitted on behalf of WE ACT for Environmental Justice (“WE ACT”), Natural Resources Defense Council (“NRDC”), and Concerned Citizens of West Badin Community (“CCWBC”) [hereinafter “requesters” or “the requester organizations”] to request public disclosure of the status of all Title VI complaints and related documents (detailed below) on the docket of the Environmental Protection Agency (“EPA”) External Civil Rights Compliance Office (“ECRCO”) and those formerly on the docket of the Office of Civil Rights (“OCR”), from April 1, 2020 to the present.

WE ACT is a nonprofit, community-driven environmental justice advocacy organization based in New York City. WE ACT’s mission is to build healthy communities by ensuring that people of color and/or low-income residents participate meaningfully in the creation of sound and fair environmental health and protection policies and practices.

NRDC is a national nonprofit environmental advocacy organization that works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. NRDC combines the support of more than two million members with the expertise of some 500 scientists, lawyers, and policy advocates. NRDC works to support the environmental justice movement by providing legal tools and expertise to grassroots allies in order to reduce environmental burdens on low-income communities and communities of color and to create healthy, vibrant neighborhoods.

CCWBC is a group of concerned residents of West Badin, an African American community near Badin Lake in Stanly County. CCWBC advocates for community-wide healthy land and clean water in and around Badin. CCWBC remains concerned about the residents and visitors whose use of Badin Lake and Little Mountain Creek for fishing, boating, and swimming, is negatively impacted by Alcoa’s continued contamination of these waters.

The requester organizations request access to all external, public documents sent or received by EPA pertaining to the status of each Title VI complaint received since April 1, 2020, as detailed below. In addition, if EPA has maintained an updated list or other document indicating the current status of all Title VI complaints received by EPA since April 1, 2020, the requesting organizations seek access to this list.

This request continues a longstanding effort by environmental justice advocates, journalists, and others to induce EPA to provide more transparent and up-to-date information about the status of Title VI complaints received by the agency. In 2012 EPA agreed to begin publishing limited docket status information on its website and to update it on a quarterly basis. However, environmental justice advocates continued to urge EPA to increase transparency by providing online access to docket materials including links to complaints, resolution agreements, and other official documents. See, e.g., Letter from Marianne Engelman-Lado, Managing Atty., Earthjustice, to Gina McCarthy, Adm'r, EPA & Gwendolyn Keyes Fleming, Chief of Staff, EPA (Nov. 5, 2013).

On July 2nd, 2013, the Center for Public Integrity (CPI) submitted a FOIA request to EPA seeking complaint and resolution letters for every case of alleged environmental discrimination starting from the mid-1990s. See Center for Public Integrity, How we acquired and analyzed data for “Environmental Justice, Denied” (Last updated August 3, 2015), <https://www.publicintegrity.org/2015/08/03/17724/how-we-acquired-and-analyzed-dataenvironmental-justice-denied>. Some records were released in April 2014, but CPI later filed two more FOIA requests to obtain additional Title VI docket information.

EPA published quarterly status updates regarding Title VI complaints on EPA’s docket in an online table (“the table”) until January 2014, including retrospective information on complaints filed as early as 1993. However, EPA has not published any such updates since 2014. The table had appeared on the webpage titled ‘Complaints Filed with EPA under Title VI of the Civil Rights Act of 1964’ (last updated Feb. 10, 2017). However, this webpage no longer exists, but the table can still be found at the following link: <https://drive.google.com/file/d/0B7S6WJlplIgFek5tNWVBbXBTNTQ/view?usp=sharing>.

The table included links to documents associated with each complaint with confidential information redacted. These documents included a copy of each complaint, as well as—in some cases—a copy of EPA’s acceptance letter or rejection letter, complaint amendments, settlement agreements, and other relevant documents. The table also included a status column that indicated the status of each complaint (i.e. accepted, rejected, jurisdictional review, referred, dismissed, settled, etc.). Although the table remained on EPA’s website until October 2016, it was not updated with new information after January 2014. See <https://drive.google.com/file/d/0B7S6WJlplIgFek5tNWVBbXBTNTQ/view?usp=sharing>. By December 2016, the table had been removed entirely.

The requester organizations have continued to advocate for EPA to make complete Title VI docket information available online, raising the issue via in-person meetings with EPA Administrators and other staff, in comments, and in correspondence. See, e.g., Letter from Marianne Engelman-Lado, Managing Atty., Earthjustice, to Gina McCarthy, Adm'r, EPA (October 27, 2015).

Pursuant to FOIA, 5 U.S.C. § 552, the requester organizations respectfully request the following records:

1. Any and all Title VI complaints and/or requests for Title VI investigations received by EPA from April 1, 2020 to the present, and any amendments to those complaints.
2. Any and all letters, external communications or other public documents, acknowledging receipt of Title VI complaints, sent by EPA from April 1, 2020 to the present.
3. Any and all letters, external communications or other public documents, communicating the outcome of jurisdictional review determinations regarding Title VI complaints, sent by EPA from April 1, 2020 to the present.
4. Any and all letters, external communications or other public documents, communicating acceptance, rejection, dismissal, suspension, and/or referral of Title VI complaints or Title VI investigations, sent by EPA from April 1, 2020 to the present.
5. Any and all letters, external communications or other public documents, concerning uses of Alternative Dispute Resolution, settlement or informal agreement to resolve specific Title VI complaints, sent by EPA from April 1, 2020 to the present.
6. Any and all letters, external communications or other public documents, communicating a final disposition and/or closure of Title VI complaints, sent by EPA from April 1, 2020 to the present.

To the extent that this request encompasses any documents which contain confidential information, we request that EPA redact portions of the requested documents that are deemed confidential, then disclose redacted documents and the justifications for any such redactions to the fullest extent possible.

FEE WAIVER REQUEST

The client organizations meet the requirements for a fee waiver for this FOIA request and request a waiver of fees in connection with this request. In the event that EPA does not waive fees, we ask EPA to notify us of the basis for your decision and to provide an estimate of costs. Please do not move forward with actions that would require expenditures until the requesting organizations have the opportunity to consider an appeal and the estimate of costs.

Particularly, “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(1). EPA considers six factors when determining whether to waive fees for a FOIA request. 40 C.F.R. § 2.107(1)(2)(i). As demonstrated below, each of the six factors weighs in favor of granting a fee waiver.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The records requested concern EPA’s enforcement activities in response to complaints

received under Title VI of the Civil Rights Act. These are part of the government's broad objective and obligation to protect Americans' civil rights. These records unquestionably "concern identifiable operations or activities of the Federal government." Id. § 2.107(1)(2)(i).

Factor 2: Disclosure of the Requested Records Is Likely To Contribute to the Public Understanding of Government Operations or Activities.

The requested information "is likely to contribute" to an understanding of EPA's Title VI compliance activities because it will supply critically important information that is not currently available to the public. 40 C.F.R. § 2.107(1)(2)(ii). This request seeks documents showing the status of Title VI complaints submitted to EPA since April 1, 2020. While EPA published quarterly online status updates regarding Title VI complaints on EPA's docket from 2012 until January 2014, EPA has not published any such updates since 2014. See <https://drive.google.com/file/d/0B7S6WJlpIIgFek5tNWVBbXBTNTQ/view?usp=sharing>. Status updates regarding these Title VI complaints and related investigations are not readily available on EPA's website or elsewhere online.

Access to these docket updates will provide the public with a picture of EPA's Title VI enforcement activities. Requester organizations are among a broad array of national, state and community-based groups that have requested that EPA make such updates publicly available. See, e.g., Letter from Marianne Engelman-Lado, Managing Atty., Earthjustice, to Gina McCarthy, Adm'r, EPA & Gwendolyn Keyes Fleming, Chief of Staff, EPA (Nov. 5, 2013); Letter from Marianne Engelman-Lado, Managing Atty., Earthjustice, to Gina McCarthy, Adm'r, EPA (October 27, 2015). Given that the requester organizations do not otherwise have access to complete information about all of EPA's ongoing Title VI investigations, this information would otherwise be difficult or impossible to collect.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience Interested in EPA's Compliance Activities Associated with Title VI of the Civil Rights Act.

Disclosure will "contribute to the understanding" of a broad audience interested in EPA's Title VI compliance activities, environmental justice, and civil rights. The requesters have staff and members who work at the intersection of civil rights and environmental protection. The requesters have a strong interest in Title VI as a tool that may be used to protect vulnerable communities, especially communities of color.

Requester organizations have the capacity and intention to disseminate the requested information to some or all of the following: (1) their members, supporters, and partnering organizations, (2) policymakers at varying levels of government interested in promoting civil rights compliance, and (3) members of the news media, who will in turn may disseminate the information more broadly to the public.

WE ACT and CCWBC intend to disseminate Title VI docket information directly to their members and partners, many of whom work on Title VI related matters. NRDC has capacity to disseminate information regarding EPA's Title VI docket to the public, as the organization

frequently provides news and information regarding environmental developments to its more than two million members and its many partnering organizations via email, mail, and newsletters, and regularly conducts outreach efforts via the national news media.

Through these varied mechanisms, the requesters intend to convey the requested information to the public to improve public understanding of how EPA handles complaints received under Title VI of the Civil Rights Act, and how EPA's Title VI complaint processing and investigation procedure may be improved to better safeguard civil rights.

Factor 4: The Public's Understanding of Government Operations Will Be Significantly Enhanced by Disclosure of the Requested Information.

Disclosure of the requested records will "contribute significantly to public understanding" of EPA's Title VI compliance activities. 40 C.F.R. § 2.107(l)(2)(iv). Consistent with EPA's mission to protect the civil rights of vulnerable communities, the requested complaint status updates will shed light on EPA's Title VI compliance and enforcement record.

Because many communities of color continue to face ongoing environmental harms and bear disproportionate environmental burdens, many affected communities, stakeholder organizations and individual members of the public continue to have a strong and ongoing interest in the improvement of EPA's Title VI compliance process. Some of these individuals and organizations currently lack adequate access to information about the status of EPA's Title VI compliance activities. We anticipate that the requested information will further public understanding of how Title VI compliance activities may be improved at the EPA and at other federal agencies and departments in the future.

EPA's External Civil Rights Compliance Office's 2015-2020 Strategic Plan indicates that ECRCO intends to "[i]ncrease proactive engagement with critical external partners and stakeholders, such as recipients and communities" and "[h]eighen transparency and accountability" by making policy guidance and other important documents and resources available to the public online. Providing public access to EPA's Title VI docket will both facilitate engagement of community stakeholders and enhance transparency.

Factor 5: The Requesters Have No Commercial Interest in the Requested Disclosure of Information.

WE ACT, NRDC and CCWBC are nonprofit organizations that have no "commercial interest that would be furthered by the requested disclosure." 40 C.F.R. § 2.107(1)(3)(i).

Factor 6: The Requesters' Sole Interest in Disclosure Is to Promote the Public Interest.

The sole interest of the requester organizations in obtaining the requested records is to inform the public about Title VI of the Civil Rights Act and its implications for recipients of federal funds, EPA's enforcement officers, and other stakeholders. Since the client organizations have no commercial interest in the requested records, the request is not "primarily in the commercial interest of the requester." Id. § 2.107(1)(3)(ii).

In sum, this request meets all of the six factors for a fee waiver. In the event that EPA does not waive fees, we ask EPA not to move forward with providing the information requested by the FOIA, notify us of the basis for your decision, and provide an estimate of costs.

INSTRUCTIONS FOR RECORD DELIVERY

Please send records to Marianne Engelman-Lado at marianne.lado@gmail.com.

Environmental Justice Clinic, Vermont Law School c/o
Marianne Engelman-Lado

In the event that you have any questions concerning the type of materials requested, or have concerns regarding the scope of the request, please contact Marianne Engelman-Lado by email at Marianne.lado@gmail.com or by telephone at (802) 831-1364.

Thank you for your assistance in this matter.

Sincerely,

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On Behalf of:

WE ACT for Environmental Justice
Natural Resources Defense Council
Concerned Citizens of West Baden Community